

HOUSE BILL No. 1645

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-27; IC 27-6-8-6; IC 35-33-8; IC 35-33-8.5-3.

Synopsis: Criminal bail procedures, public adjuster license. Specifies conduct requirements for public adjusters and adds penalties for violations of the requirements. Changes the membership of the insurance guaranty association. Specifies certain bail requirements. Provides for use of forfeited funds and funds collected by the clerk of the court.

Effective: July 1, 2005.

Ripley

January 19, 2005, read first time and referred to Committee on Insurance.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1645

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-1-27-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) As used in this
3 section, "practitioner" means an individual or corporation who or which
4 holds a certificate of authority under this chapter.
5 (b) A practitioner shall conduct the practice of public adjusting in
6 accordance with the standards established by the commissioner of
7 insurance under section 8 of this chapter and is subject to the exercise
8 of the disciplinary sanctions under subsection (e), if after a hearing, the
9 commissioner finds:
10 (1) the practitioner has employed or knowingly cooperated in
11 fraud or material deception in order to obtain a certificate to
12 practice public adjusting, or has engaged in fraud or material
13 deception in the course of professional services or activities, or
14 has advertised services in a false or misleading manner;
15 (2) the practitioner has been convicted of a crime which has direct
16 bearing on the practitioner's ability to continue to practice
17 competently;



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(3) a practitioner has knowingly violated any rule adopted by the commissioner under section 8 of this chapter;

(4) a practitioner has continued to practice although he has become unfit to practice public adjusting due to:

(A) professional incompetence;

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction or severe dependency upon alcohol or other drugs which endangers the public by impairing a practitioner's ability to practice safely;

(5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to clients; or

(6) a practitioner has allowed his name or a certificate issued to him under this chapter to be used in connection with any individual who renders public adjusting services beyond the scope of his training, experience, or competence.

(c) The commissioner of insurance may order a practitioner to submit to a reasonable physical or mental examination if his physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(d) Failure to comply with an order under subsection (c) shall render a practitioner liable to the summary revocation procedures under subsection (f).

(e) The commissioner of insurance may impose any of the following sanctions, singly or in combination, when he finds that a practitioner is guilty of any offense under subsection (b):

(1) Permanently revoke a practitioner's certificate.

(2) Suspend a practitioner's certificate.

(3) Censure a practitioner.

(4) Issue a letter of reprimand.

(5) Place a practitioner on probation status and require the practitioner to:

(A) report regularly to the commissioner upon the matters which are the basis of probation;

(B) limit practice to those areas prescribed by the commissioner; or

(C) continue or renew professional education under a practitioner approved by the commissioner until a satisfactory degree of skill has been attained in those areas which are the basis of the probation.

The commissioner may withdraw a probation order if he finds that

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the deficiency which required disciplinary action has been remedied.

(6) Deny or refuse to renew a practitioner's certificate.

(7) Impose a civil penalty not to exceed ten thousand dollars (\$10,000) per offense.

(f) The commissioner of insurance may summarily suspend a practitioner's certificate for a period of ninety (90) days in advance of a final adjudication or during the appeals process if the commissioner finds that a practitioner represents a clear and immediate danger to the public health and safety if he is allowed to continue to practice. The summary suspension may be renewed upon a hearing before the commissioner, and each renewal may be for a period of ninety (90) days or less.

(g) The commissioner of insurance may reinstate a certificate which has been suspended under this chapter if, after a hearing, the commissioner is satisfied that the applicant is able to practice public adjusting with reasonable skill and safety to clients. As a condition of reinstatement, the commissioner may impose disciplinary or corrective measures authorized under this chapter.

(h) The commissioner of insurance shall seek to achieve consistency in the application of the sanctions authorized in this section, and significant departures from prior decisions involving similar conduct shall be explained in the commissioner's findings or orders.

(i) The commissioner of insurance may initiate proceedings under this section on his own motion or on the verified written complaint of any interested person. All such proceedings shall be conducted in accordance with IC 4-21.5.

SECTION 2. IC 27-1-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The commissioner of insurance shall, in the manner prescribed by IC 4-22-2, adopt standards for the competent practice of public adjusting appropriate to establish and maintain a high standard of integrity and dignity in the profession of public adjusting.

(b) The standards adopted under subsection (a) must include the following:

(1) A public adjuster shall not solicit an employment contract with an insured less than seven (7) days after the occurrence of the loss giving rise to the claim to be adjusted, unless the public adjuster is directly contacted by the insured.

(2) A public adjuster shall not pay money or anything of value to a person:

(A) in consideration of; or

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- 1 (B) as an inducement to;
 2 the person's referral of an insured or a potential insured to
 3 the public adjuster.
 4 (3) A public adjuster shall not directly or indirectly charge,
 5 collect, or receive money or anything of value from a person
 6 that provides services to an insured unless the charge,
 7 collection, or receipt is disclosed to the insured in writing
 8 before the services are rendered.
 9 (4) A public adjuster shall not rebate to an insured a part of
 10 a fee specified in the employment contract between the public
 11 adjuster and the insured.
 12 (5) A public adjuster shall not:
 13 (A) share a part of the public adjuster's fee with; or
 14 (B) pay money to;
 15 a person for services rendered to an insured unless the person
 16 holds a certificate of authority issued under this chapter.
 17 (6) A public adjuster shall not have an interest in:
 18 (A) a home improvement;
 19 (B) a restoration;
 20 (C) a construction;
 21 (D) a salvage;
 22 (E) an appraisal;
 23 (F) a loss mitigation;
 24 (G) a cleaning; or
 25 (H) an environmental restoration;
 26 business that conducts business in Indiana.
 27 (7) A public adjuster shall not:
 28 (A) misrepresent to a person facts concerning an insurer or
 29 employees of an insurer; or
 30 (B) advise a person on a question of law.
 31 (8) A public adjuster shall not solicit employment from an
 32 insured in connection with a claim that is the subject of an
 33 employment contract between the insured and another public
 34 adjuster.
 35 (9) A public adjuster shall not represent both the insurer and
 36 the insured.
 37 (10) A public adjuster shall not advance money to an insured
 38 before the settlement of a claim with the expectation that the
 39 public adjuster will be repaid any settlement funds received
 40 by the insured.
 41 SECTION 3. IC 27-6-8-6 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The board of directors of the

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association shall consist of ~~nine (9)~~ **eight (8)** member insurers one (1) of whom shall be selected by or from among each of the following groups representative of member insurers, such selection to be subject to the approval of the commissioner:

(1) One (1) person representing the American Insurance Association.

(2) One (1) person representing the ~~Alliance of American insurers.~~ **Property and Casualty Insurance Association of America.**

~~(3) One (1) person representing the National Association of Independent Insurers.~~

~~(4) (3)~~ One (1) person representing the National Association of Mutual Insurance Companies.

~~(5) (4)~~ One (1) person representing the Insurance Institute of Indiana.

~~(6) (5)~~ Three (3) persons representing the:

(A) domestic stock companies;

(B) domestic mutual companies; or

(C) domestic reciprocal insurers;

with not more than two (2) persons representing any category.

~~(7) (6)~~ One (1) person representing independent unaffiliated stock, fire, and casualty companies to be appointed by the commissioner.

(b) Not more than one (1) member insurer in a group of insurers under the same management or ownership shall serve as a director at the same time.

(c) Directors shall serve such terms as shall be established in the plan of operation.

(d) Vacancies on the board shall be filled for the remaining period of the term in the same manner as the initial selection.

(e) If no directors are selected by March 1, 1972, the commissioner may appoint the initial members of the board of directors.

(f) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(g) Directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 4. IC 35-33-8-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.3. As used in this chapter, "insurer" has the meaning set forth in IC 27-10-1-7.**

SECTION 5. IC 35-33-8-3.2 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond ~~with sufficient solvent sureties; written by an insurer;~~

(B) deposit cash or securities in an amount equal to the bail; **or**

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail. ~~or~~

~~(D) post a real estate bond.~~

The defendant shall also pay the fee required by subsection (f).

(2) Subject to subsection (b) and except as provided in subsection (c), if the defendant is charged with a misdemeanor or felony and is a resident of Indiana, require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. **The defendant shall also pay the fee required by subsection (f).** If the defendant is convicted ~~of the misdemeanor or felony,~~ the court may retain all or a part of the cash or securities **deposited** to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) Fines, costs, fees, and restitution as ordered by the court.

(B) Publicly paid costs of representation that shall be disposed of in accordance with subsection ~~(b)~~ **(d).**

(C) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection ~~(b)~~ **(d).**

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(3) Subject to subsection (b) and except as provided in subsection (c), if the defendant is charged with a misdemeanor or felony and is not a resident of Indiana, require the defendant to execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail or require the defendant to execute a bail bond by depositing cash or securities equal to the full amount of the bail with the clerk of the court. The defendant shall also pay the fee required by subsection (f). If the defendant is convicted of the misdemeanor or felony, the court may retain all or a part of the cash or securities deposited to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) Fines, costs, fees, and restitution as ordered by the court.

(B) Publicly paid costs of representation that shall be disposed of in accordance with subsection (d).

(C) In the event of the posting of a real estate bond, the bond shall be used only to ensure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (d).

~~(3)~~ (4) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

~~(4)~~ (5) Require the defendant to refrain from any direct or indirect contact with an individual.

~~(5)~~ (6) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

~~(6)~~ (7) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall

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maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

~~(7)~~ **(8)** Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

~~(8)~~ **(9)** Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

An individual posting bail for a defendant described in subdivision (2) or (3) must be related to the defendant within the third degree of affinity.

(b) A defendant described in subsection (a)(2) or (a)(3) may post a bail bond written by an insurer in an amount not less than twenty-five percent (25%) of the bail. The liability of the insurer is limited to the amount written.

(c) Subsection (a)(2) and (a)(3) does not apply to a defendant who:

(1) is currently released from custody from any jurisdiction on any charge;

(2) has failed to appear in court in any jurisdiction within the preceding five (5) years;

(3) has been convicted of a felony in any jurisdiction within the preceding five (5) years; or

(4) is charged with a crime of violence (as defined in IC 35-50-1-2) in any jurisdiction.

~~(b)~~ **(d)** Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) or (a)(3) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

~~(c)~~ **(e)** For purposes of subsection ~~(b)~~; **(d)**, "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(f) Except as provided in subsection (g), the clerk of the court

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shall collect a fee of twenty dollars (\$20) for each bond executed or deposit made under subsection (a)(1), (a)(2), and (a)(3). The clerk of the court shall semiannually remit the fees collected under this subsection as follows:

(1) Fifty percent (50%) must be deposited in the supplemental public defender services fund established under IC 33-40-3-1 in the county in which the court is located.

(2) Fifty percent (50%) must be:

(A) deposited in the county general fund of the county in which the court is located; and

(B) credited to a separate account identified as the county jail improvement account.

A county may expend funds credited to a county jail improvement account under this subdivision, without appropriation, only for the operation, construction, repair, remodeling, and enlargement of a county jail.

~~(d)~~ (g) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section **and the fees specified in subsection (f)**. The county sheriff shall remit the:

(1) bail to the clerk of the court by the following business day; and

(2) fees to the clerk of the court one (1) time each month.

~~(e)~~ (h) When a court imposes a condition of bail described in subsection ~~(a)(4)~~: **(a)(5)**:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 6. IC 35-33-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) **or 3.2(a)(3)** of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall issue a warrant for the defendant's arrest **and, except as provided in subsection (b), declare the cash or securities deposited and the remainder of the bail forfeited. Judgment on the cash or securities and the remainder of the bail must be ordered by the court and entered by the clerk not sooner than one hundred twenty (120) days after the day the defendant fails to appear if the defendant does not appear during the one hundred twenty (120) day period. The clerk shall provide notice of the judgment to the defendant and other depositors of the cash or securities by mail not**

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1 later than forty-five (45) days after judgment is entered by the
2 court.

3 (b) In a criminal case, if the court having jurisdiction over the
4 criminal case receives written notice of a pending civil action or an
5 unsatisfied judgment against the criminal defendant arising out of the
6 same transaction or occurrence forming the basis of the criminal case,
7 ~~funds cash or securities~~ deposited with the clerk of the court under
8 section 3.2(a)(2) or 3.2(a)(3) of this chapter **and the remainder of the**
9 **collected or uncollected bail** may not be declared forfeited by the
10 court, and the court shall order the deposited ~~funds cash or securities~~
11 **and the remainder of the bail collected** to be held by the clerk. If
12 there is an entry of final judgment in favor of the plaintiff in the civil
13 action, and if the ~~deposit~~ **deposited cash or securities** and the ~~bond~~
14 **remainder of the bail collected** are subject to forfeiture, the criminal
15 court shall order payment of all or any part of the ~~deposit~~ **deposited**
16 **cash or securities and the remainder of the bail collected** to the
17 plaintiff in the action, as is necessary to satisfy the judgment. The court
18 shall then order the remainder of the ~~deposit~~ **deposited cash or**
19 **securities**, if any, and the ~~bond~~ **remainder of the bail collected to be**
20 forfeited.

21 (c) Any proceedings concerning the ~~bond~~ **bail**, or its forfeiture,
22 judgment, or execution of judgment, shall be held in the court that
23 admitted the defendant to bail.

24 (d) After ~~a bond has the deposited cash or securities and the~~
25 **remainder of the bail collected have been forfeited and judgment**
26 **entered** under subsection (a) or (b), the clerk shall, **not later than**
27 **forty-five (45) days after the forfeiture**, mail notice of forfeiture to
28 the defendant **and record the judgment**. In addition, ~~unless~~ if the
29 court finds that there was justification for the defendant's failure to
30 appear **within the one hundred twenty (120) day period specified in**
31 **subsection (a)**, the court ~~shall immediately enter~~ **may vacate the**
32 **judgment on the day after the day the one hundred twenty (120) day**
33 **period expires**, without pleadings and without change of judge or
34 change of venue, against the defendant **or other depositor or**
35 **guarantor** for the amount of the bail, ~~bond~~, and the clerk shall record
36 the **vacated** judgment.

37 (e) If ~~a bond is deposited cash or securities and the remainder of~~
38 **the bail collected are** forfeited and the court has entered a judgment
39 under subsection (d), the clerk shall transfer to the ~~state~~ common
40 school fund:

41 (1) any amount remaining on deposit with the court (less the
42 **administrative** fees retained by the clerk); and

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(2) any amount **of the remainder of the bail** collected in satisfaction of the judgment **(less attorney's fees and collection costs retained by the clerk).**

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) **or 3.2(a)(3)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 7. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) If a defendant was admitted to bail under section ~~3.2(a)~~ **3.2(a)(1)** of this chapter and the defendant has ~~knowingly and intentionally~~ failed to appear before the court as ordered, the court ~~(+)~~ shall issue a warrant for the defendant's arrest **and, except as provided in subsection (b), declare the bail bond forfeited. If the defendant was admitted to bail under section 3.2(a)(1)(A) of this chapter, judgment on the bail bond must be made under IC 27-10-2-12. If the defendant was admitted to bail under section 3.2(a)(1)(B) or 3.2(a)(1)(C) of this chapter, judgment on the bail bond may be withheld for one hundred twenty (120) days. If the bail bond has been forfeited and judgment has been entered under subsection (c), the court:**

~~(2)~~ **(1)** may not release the defendant on personal recognizance; and

~~(3)~~ **(2)** may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an ~~entity defined in IC 27-10-1-7~~ **insurer** or the full amount of the ~~bond~~ **bail** in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or **an** unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds cash or securities~~ **deposited** with the clerk of the court under section **3.2(a)(1)(B), 3.2(a)(2), or 3.2(a)(3)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited ~~funds cash or securities~~ **to be held** by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

(c) After a bail bond has been forfeited under subsection (a) or

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(b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there is justification for the defendant's failure to appear within the one hundred twenty (120) day period after the date the notice is mailed, the court shall enter judgment and mail notice after the one hundred twenty (120) day period expires, without pleadings and without change of the judge or change of venue, against the defendant for the amount of the bail, and the clerk shall record the judgment.

(d) If a bond is forfeited and the court has entered judgment under subsection (c), the clerk shall transfer to the common school fund any amount:

- (1) remaining on deposit with the court; and
- (2) collected in satisfaction of the judgment (less attorney's fees and collection costs retained by the clerk).

(e) If a defendant appears at trial and other critical stages of a legal proceeding, the court shall order the clerk to:

- (1) return any deposit made; or
- (2) release any real estate used to secure the defendant's bail; under section 3.2(a)(1) of this chapter to the defendant or another person, if the person made the deposit or owns the real estate, not more than forty-five (45) days after the date of the disposition of the charges against the defendant.

SECTION 8. IC 35-33-8.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A court or officer required to take or accept any bail, **bond**, or recognizance ~~or to~~ **shall:**

- (1) approve the sureties offered on any bond or recognizance in any case of a criminal nature; ~~may~~
- (2) require any person offered as surety ~~thereon~~ **on a bond or recognizance described in subdivision (1)** to make affidavit of the person's qualifications or to be examined orally under oath touching the same; and ~~such court or officer may~~
- (3) take ~~such an~~ affidavit or administer ~~such an~~ **oath described in subdivision (2).**

SECTION 9. [EFFECTIVE JULY 1, 2005] IC 35-33-8-7 and IC 35-33-8-8, both as amended by this act, apply only to a defendant admitted to bail after June 30, 2005.

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